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LEGALLY, WHAT CAN YOU ASK VOLUNTEERS?

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Americans with Disabilities Act of 1990 (ADA)

Introduced as S.933 by Senator Tom Harkin (D-IA) on May 9, 1989
 Passed by Senate on September 7, 1989 by a vote of 76-8
 Passed by House of Representatives by a unanimous voice vote on May 22, 1990
 Signed into law by President George H.W. Bush on July 26, 1990

Major Civil Rights Legislation

Added a new protected class of persons, those with disabilities, to already existing protected classes of race, religion, sex, and national origin against whom discrimination is barred

Barred discrimination against disabled persons in employment, government programs, public accommodations, transportation, and telecommunications

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CONGRESSIONAL FINDINGS AND PURPOSES

Physical or mental disabilities do not diminish a person's right to fully participate in society

Disabled persons have been isolated and segregated

Discrimination against disabled persons is a serious and pervasive problem

ADA designed to eliminate discrimination against disable persons

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WHAT IS A DISABILITY?

“a physical or mental impairment that substantially limits one or more major life activities of such individual”

42 U.S.C. Sec. 12102(1)(A)

Major Life Activities

“caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working”

42 U.S.C. Sec. 12102(2)(A)

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WHAT IS NOT A DISABILITY?

Current substance abuse

Sexual Behavioral Disorders

Compulsive Gambling

Visual impairment correctable by prescription lenses

The determination of whether any particular condition is a disability is often made by Courts through litigation

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WHAT IS INCLUDED UNDER THE ADA?

The ADA bars discrimination in:

Employment (Title I)

Public Entities and Public Transportation (Title II)

Public Accommodations and Commercial Facilities (Title III)

Telecommunications (Title IV)

Miscellaneous Provisions (Generally Procedural Issues) (Title V)

We will primarily address Titles I, II, and III

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EMPLOYMENT (Title I)

What Employers are Covered?

State and Local Governments

Employment Agencies

Labor Unions

Private Employers with 15 or more Employees

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EMPLOYMENT PRACTICES

Advertising, Application Process, and Hiring

Job Training and Promotion

Reasonable Accommodation

Discipline and Termination

Salary, Benefits, and Privileges

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WHAT CONSTITUTES DISCRIMINATION?

Denying employment opportunities to qualified disabled applicants

Not making reasonable accommodations to known physical or mental limitations of disabled applicants or employees

Not providing needed accommodations in training or policies to disabled employees

Not advancing or promoting qualified disabled employees

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ARE VOLUNTEERS EMPLOYEES?

WARNING!!! – LAWYER ANSWER

“It depends.”

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DEPENDS ON WHAT?

Does the volunteer receive “significant remuneration”? (Pay and Benefits)

Does volunteer service usually lead to employment?

Does volunteer service involve a governmental program?

If so, the volunteer is covered by the ADA

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SECTION 504

The Rehabilitation Act of 1973, Section 504 states,

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

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PROHIBITED PRACTICES - ADVERTISING

Do not advertise persons with disabilities are prohibited from applying

Do not advertise job qualifications if they are not necessary to performing the job

EXAMPLE – Do not advertise a “need to bench press 200 pounds” for an office worker position

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PROHIBITED PRACTICES - INTERVIEWS

Do not ask applicants if they have a disability

You may ask them if they need accommodations

You may ask them if they are able to meet the job requirements – with or without accommodations

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MEDICAL TESTING

Employers may conduct medical testing for applicants who have been tendered a job offer only if...

All applicants offered jobs are also required to submit to medical testing, and

The test results are treated as a confidential medical record (HIPPA)

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HIRING PRACTICES

Are disabled persons entitled to a preference?

No.

They are entitled to reasonable accommodations in applying for a job and in performing that job

They must still be qualified and have the skills, experience, and education required for the job

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DISCLOSURE OF DISABILITY

The applicant or employee actually discloses the need for accommodation. The reason for the accommodation often leads to disclosure of the disability.

If the applicant or employee needs accommodation a request must be made. If not, discrimination cannot be alleged.

If accommodation is not needed, disclosure is a personal choice of the applicant or employee

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PUBLIC ENTITIES & TRANSPORTATION (Title II)

All governmental entities and their programs are covered under the ADA

State Government

County Government

Municipal Government

School Districts

Miscellaneous Governmental Entities:

Public Utilities

Natural Resources Districts

Public Transportation (Either as separate authority or provided by govt. entity)

Public Housing Programs

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PUBLIC ACCOMMODATIONS & COMMERCIAL FACILITIES (Title III)

New Construction
All construction after July, 1992 must comply with ADA Accessibility Guidelines

Existing Structures
Must remove barriers to bring structure into ADA compliance if compliance is readily achievable, meaning "easily accomplished without much difficulty or expense."
42 U.S.C. Sec. 12181(9)
Like disability, what is "easily accomplished without much difficulty or expense" has been determined by Courts through litigation

Exceptions
Private Clubs
Religious organizations
Historic Properties

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QUESTIONS?
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